

CONTENTS

CHAPTER 536. GRADE AND PAY RETENTION

PARAGRAPH	PAGE
1. Scope	1
2. Exclusions.....	1
3. References	1
4. Coverage and Eligibility for Grade Retention	1
5. Coverage and Eligibility for Pay Retention.....	2
6. Termination of Grade and Pay Retention Benefits	3
7. Appeals	4
8. Documentation.....	4

CHAPTER 536. GRADE AND PAY RETENTION
(To Be Used With 5 CFR, Part. 536)

1. SCOPE

The grade and pay retention provisions of this chapter apply to employees under or moving into positions under the General Schedule, the Performance Management and Recognition System and the Federal Wage System, including Nonappropriated Fund employees in the Veterans Canteen Service who are subject to the Federal Wage System.

2. EXCLUSIONS

- a. Veterans Health Administration employees appointed or compensated under 38 U.S.C. ch. 74.
- b. Employees compensated under the Executive Schedule (5 U.S.C. ch. 53).
- c. Nonappropriated Fund Veterans Canteen Service employees appointed under 38 U.S.C. 7802, except those employed in a recognized trade or craft, as indicated in paragraph 1 above. (NOTE: All Nonappropriated Fund Veterans Canteen Service employees moving into positions covered by paragraph 1 are eligible for grade and pay retention benefits provided they meet the criteria contained in this chapter.)
- d. Purchase and hire employees appointed under Schedule A, section 213.3127(a)(1).
- e. Employees whose appointments have definite time limitations or are designated as temporary or term.

3. REFERENCES

- a. 5 U.S.C. 5361-5366.
- b. 5 Code of Federal Regulations, Part 536.

4. COVERAGE AND ELIGIBILITY FOR GRADE RETENTION

- a. Grade retention is required by 5 CFR 536.103(a) if an employee is changed to a lower grade position in a covered pay schedule as a result of reclassification on reduction-in-force procedures. Employees must meet the appropriate eligibility requirements in 5 CFR 536.103(c) (1) or (2) to be eligible for grade retention under 5 CFR 536.103(a).
- b. Under the provisions of 5 CFR 536.103(b), VA is extending grade retention to eligible employees who are, or who might be, reduced to a grade in a covered pay schedule as a result of a reorganization (including transfer-of-function) or reclassification decision announced by management in writing. To be eligible for grade retention under 5 CFR 536.103(b), the position must be offered by the official having delegated appointment authority under VA Manual MP-5, part I, chapter 250, paragraph 10, and the employee must meet the appropriate eligibility

requirements in 5 CFR 536.103(c)(3). The following documentation is required when applying grade retention under this subparagraph:

(1) If the employee accepts an offer under this subparagraph, the following information will be documented in his/her OPF (Official Personnel Folder) to record the basis for grade retention: the reason for the reorganization or reclassification; the title, grade, and series of the position being abolished, downgraded, or transferred; and a description of how the demotion reduced the adverse impact of the reorganization or reclassification. An example of an appropriate use of this authority is for transfer-of-function volunteers who allow the Department to retain employees who would otherwise be separated. (Under 5 CFR 351.303(e), employees may be permitted to volunteer to transfer with a function. By offering grade retention to a volunteer who is willing to transfer if, and only if, grade retention is offered, management may be able to retain the services of both this employee and the employee who would otherwise be separated for failing to transfer with his/her function.)

(2) When an employee is offered a position with grade retention in anticipation of his or her current position being abolished or downgraded, the employee shall be informed in writing that acceptance of the offered position is not required and that the declination of the offer has no effect on the employee's entitlement to grade retention if he or she does not accept the offer and is then actually changed to a lower grade position as a result of reduction-in-force procedures or a reclassification process.

(3) When an employee is offered a position with grade retention in lieu of transferring with his or her function, the employee shall be informed in writing that acceptance of the position is not required and the declination of the offer has no effect on the employee's eligibility to transfer with his or her function.

(4) When an employee is offered a position with grade retention in anticipation of another employee being demoted or separated as a result of reduction-in-force procedures, reclassification or transfer-of-function, the offer must state that if the employee declines, he/she will remain in his/her position unless otherwise reduced under one of these procedures.

5. COVERAGE AND ELIGIBILITY FOR PAY RETENTION

a. Pay retention is required for those employees whose pay would otherwise be reduced under the circumstances described in 5 CFR 536.104(a).

b. Under the provisions of 5 CFR 536.104(b), VA is extending pay retention to employees placed in positions when the employee's pay would otherwise be reduced, when the placement is not for cause, including performance evaluation, or at the employee's request, and when the employee is not otherwise eligible for pay retention under subparagraph a above. For example:

(1) Pay retention based on special recruitment needs must be supported by a memorandum from the selecting official documenting the KSAO,s (knowledges, skills, abilities, and other characteristics) required for the position; the lack or comparable lack of possession of such KSAO's by other available candidates; and that the nonselection of the change- to-lower-grade

candidates would adversely impact upon the efficiency or effectiveness of operations or programs.

(2) Pay retention based upon demotion or reassignment as a result of solicitation of an employee by the Department to fill a position requiring special KSAO's must be documented by a memorandum which, in this case, would show the KSAO's required, the candidate's possession of them, and the unlikelihood of locating other candidates with equal possession of these KSAO's.

(3) Pay retention because of a change to lower grade or a reassignment in lieu of disability retirement.

(4) Pay retention because of a change to a lower grade initiated by the Department. It is not considered to be taken at the employee's request even though the employee may have previously asked the Department to consider his/her personal situation. For example, when Department officials judge that the employee's skills could be better utilized in a position for which there are no special recruitment needs.

c. In order to deny pay retention under this paragraph, the pay loss must have been for cause, including performance evaluation, or at the employee's request.

(1) To deny pay retention for cause or performance evaluation, the denial must be based upon an action or actions which have been properly documented under appropriate VA policy.

(2) An employee's request must be the direct cause of the pay loss to deny pay retention under this paragraph. In other words, if the change is initiated by the employee, for his or her personal advantage, and the Department is responsive thereto, pay retention benefits do not apply. (For example, the employee voluntarily applies for a change to lower grade under competitive merit promotion procedures and the change is not to a recognized employee development program, to a formal upward mobility program, or based on a special recruitment need, or an employee applies for a change to a lower grade for health reasons when such a change has not been initiated or requested by the Department.) If the placement action results in a change to lower grade or reassignment resulting from a solicitation by the Department to fill a position requiring special skills, it is not taken at the employee's request, even though the employee may have previously asked the Department to consider his/her personal situation. *NOTE: It may not be assumed that simply because management initiates recruitment by advertising a vacancy and a change to lower grade or rate of pay results, management has initiated the action. Pay retention is only appropriate for placements meeting the criteria contained in subparagraphs a and b above.*

6. TERMINATION OF GRADE AND PAY RETENTION BENEFITS

a. Eligibility for grade retention is terminated under the circumstances described in 5 CFR 536.207 and 5 CFR 536.208.

b. Eligibility for pay retention is terminated under the conditions described in 5 CFR 536.209.

7. APPEALS

a. **Declination of Reasonable Offer.** Employees who believe their grade or pay retention benefits have been improperly terminated for failure to accept a reasonable offer may appeal the termination under 5 CFR 536.302. The criteria for a reasonable offer are contained in 5 CFR 536.206.

b. **Submission of Appeals.** If the employee believes his or her grade retention benefits have been improperly terminated for failure to enroll in or comply with the requirements of the Priority Placement Program, the employee may appeal such termination of benefits through the VA Grievance Procedure or through an appropriate negotiated grievance procedure, as applicable.

8. DOCUMENTATION

The application of the provisions of this manual shall be documented in writing as a permanent part of the employee's Official Personnel Folder. As a minimum, this will include the documentation required in paragraphs 4b and 5b of this chapter and a copy of the letter described in 5 CFR 536.304.